: 4510-FP-P

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 655

[DOL Docket No. ETA-2020-0005]

RIN 1205-AB99

Adjudication of Temporary and Seasonal Need for Herding and Production of Livestock on the Range Applications under the H–2A Program

AGENCY: Employment and Training Administration (ETA), Labor.

ACTION: Proposed rule; request for comments.

SUMMARY: The Department of Labor (the Department) proposes to amend its regulations regarding the adjudication of temporary need for employers seeking herding or production of livestock on the range job opportunities under the H–2A program. Consistent with a court-approved settlement agreement, this notice of proposed rulemaking (NPRM or proposed rule) would rescind the regulation that governs the period of need for such job opportunities to ensure the Department's adjudication of temporary or seasonal need is conducted in the same manner for all applications for temporary agricultural labor certification.

DATE: Interested persons are invited to submit written comments on the proposed rule on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by Regulatory Information Number (RIN) 1205-AB99, by the following method:

Electronic Comments: Comments may be sent via *http://www.regulations.gov*, a Federal E-Government website that allows the public to find, review, and submit comments on documents that agencies have published in the *Federal Register* and that are open for comment. Simply type

in '1205-AB99' (in quotes) in the Comment or Submission search box, click Go, and follow the instructions for submitting comments.

Instructions: All submissions must include the agency's name and the RIN 1205-AB99. Please be advised that comments received will become a matter of public record and will be posted without change to *http://www.regulations.gov*, including any personal information provided. *Docket*: For access to the docket to read background documents or comments, go to the Federal e-Rulemaking Portal at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Brian Pasternak, Administrator, Office of Foreign Labor Certification, Employment and Training Administration, Department of Labor, 200 Constitution Avenue, NW, Room N-5311, Washington, DC 20210, telephone: (202) 693-8200 (this is not a toll-free number). Individuals with hearing or speech impairments may access the telephone number above via TTY/TDD by calling the toll-free Federal Information Relay Service at 1 (877) 889-5627.

SUPPLEMENTARY INFORMATION:

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I. Background on 20 CFR Part 655, Subpart B

A. Statutory Framework

The H–2A nonimmigrant worker visa program enables U.S. agricultural employers to employ foreign workers on a temporary basis to perform temporary or seasonal agricultural labor or services where the Secretary of Labor (Secretary) certifies that (1) there are not sufficient

workers who are able, willing, and qualified, and who will be available at the time and place needed to perform the labor or services involved in the petition; and (2) the employment of the aliens in such labor or services will not adversely affect the wages and working conditions of workers in the United States similarly employed. *See* section 101(a)(15)(H)(ii)(a) of the Immigration and Nationality Act (INA or the Act), as amended by the Immigration Reform and Control Act of 1986 (IRCA), 8 U.S.C. 1101(a)(15)(H)(ii)(a); section 218(a)(1) of the INA, 8 U.S.C. 1188(a)(1). The Secretary has delegated the authority to issue temporary agricultural labor certifications to the Assistant Secretary for Employment and Training, who in turn has delegated that authority to ETA's Office of Foreign Labor Certification (OFLC). Secretary's Order 06–2010 (Oct. 20, 2010).[1] Once OFLC issues a temporary agricultural labor certification, employers may then petition the U.S. Department of Homeland Security (DHS) to employ a nonimmigrant worker in the United States in the H–2A visa classification.

B. Regulatory Framework

Since 1987, the Department has operated the H–2A temporary agricultural labor certification program under regulations promulgated pursuant to the INA.[2] With limited exceptions, including those set forth below, the Department's current regulations governing the H–2A program were published in 2010.[3] The standards and procedures applicable to the certification and employment of workers under the H–2A program are found in 20 CFR part 655, subpart B and 29 CFR part 501.[4]

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[1] In addition, the Secretary has delegated to the Department's Wage and Hour Division the responsibility under section 218(g)(2) of the INA, 8 U.S.C. 1188(g)(2), to assure employer compliance with the terms and conditions of employment under the H–2A program. Secretary's Order 01–2014 (Dec. 19, 2014).

[2] The Immigration and Nationality Act of 1952 created the H–2 temporary worker program. Public Law 82–414, 66 Stat. 163. In 1986, IRCA divided the H–2 program into separate agricultural and nonagricultural temporary worker programs. *See* Public Law 99–603, section 301, 100 Stat. 3359 (1986). The H–2A agricultural worker program designation corresponds to the statute's agricultural worker classification in 8 U.S.C. 1101(a)(15)(H)(ii)(a).

[3] *Temporary Agricultural Employment of H–2A Aliens in the United States*, 75 FR 6884 (Feb. 12, 2010).

[4] The Department is currently engaged in a separate rulemaking that seeks to amend these regulations as they pertain to the H–2A program. *Temporary Agricultural Employment of H–2A Nonimmigrants in the United States*, 84 FR 36168 (July 26, 2019) (2019 NPRM). The 2019 NPRM proposed amendments to the current regulations that focus on modernizing the H–2A program and eliminating inefficiencies. The 2019 NPRM also proposed to amend the regulations for enforcement of contractual obligations for temporary foreign agricultural workers and the Wagner-Peyser Act regulations to provide consistency with revisions to H–2A program regulations governing the temporary agricultural labor certification process.

Historically, employers in a number of states (primarily but not exclusively in the western continental United States) have used what is now the H–2A program to bring in foreign workers to work as sheep and goat herders.[5] Beginning in 1989, and consistent with Congress' historical approach, the Department established variances from certain H–2A regulatory requirements and procedures through sub-regulatory guidance to allow employers of open range sheep and goat herders to use the H–2A program. The Department established similar variances or "special procedures" through sub-regulatory guidance in 2007 for employers seeking to employ H–2A workers for open range herding or production of livestock positions. In 2015, the Department incorporated these "special procedures" provisions for the employment of workers in the herding and production of livestock on the range, with some modifications, into its H–2A regulation. *Temporary Agricultural Employment of H–2A Foreign Workers in the Herding or Production of Livestock on the Range in the United States*, 80 FR 62958 (Oct. 16, 2015) (2015 Rule).[6] The variances codified in the 2015 Rule continued the agency's recognition of the unique occupational characteristics of herding positions, which involve spending extended periods of time herding animals across remote range lands and being on call to protect and maintain herds for up to 24 hours a day, 7 days a week. These variances are codified at §§ 655.200 through 655.235.[7]

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[5] As the Department explained in its 2015 herder rulemaking, Congress enacted statutes during the early 1950s authorizing the permanent admission of a certain number of "foreign workers skilled in sheepherding." *See Temporary Agricultural Employment of H–2A Foreign Workers in the Herding or Production of Livestock on the Open Range in the United States*, 80 FR 20300, 20301-20302 (Apr. 15, 2015). Congress subsequently permitted these special laws to expire and signaled that sheepherders should be admitted under the existing temporary (then H-2) program. *Id.*; *see also Changes to Requirements Affecting H–2A Nonimmigrants*, 73 FR 76891, 76906-76907 (Dec. 18, 2008).

[6] The 2015 Rule followed litigation in *Mendoza v. Perez*, in which the U.S. Court of Appeals for the District of Columbia Circuit held the special procedures pertaining to sheep, goat, and other open range herding or production of livestock were subject to the Administrative Procedure Act's (APA) notice and comment requirements. 754 F.3d 1002, 1024 (D.C. Cir. 2014); *see Mendoza v. Perez*, 72 F. Supp. 3d 168, 175 (D.D.C. 2014) (remedial order setting a rulemaking schedule).

[7] The 2019 NPRM proposed clarifying and technical revisions to certain provisions for employment of workers in herding and production of livestock on the range (*e.g.*, portions of 20 CFR 655.205, 655.211, 655.220, and 655.225) that are not the subject of this proposal. 84 FR 36168, 36220-21. The 2019 NPRM also proposed to incorporate into the H–2A regulations, with some modifications, the standards and procedures currently found in Training and Employment Guidance Letters related to animal shearing, commercial beekeeping, and custom combining, and to rescind the general provision that allows for the creation of "special procedures" (*i.e.*, sub-regulatory variances from the regulations). *Id.* at 36171-73.

Section 101(a)(15)(H)(ii)(a) of the INA permits only "agricultural labor or services . . . of a temporary or seasonal nature" to be performed under the H–2A visa category. 8 U.S.C. 1101(a)(15)(H)(ii)(a). Thus, as part of the Department's adjudication of applications for temporary agricultural labor certification, the Department assesses on a case-by-case basis whether the employer has established a temporary or seasonal need for the agricultural work to be performed. *See* 20 CFR 655.161(a). In its initial rulemaking on the H–2A program in 1987, the Department explained that it would be appropriate for an employer to apply annually for recurring job opportunities in the same occupation when it involved "truly 'seasonal' employment," but acknowledged that "the longer the employer needs a 'temporary' worker, the more likely it would seem that the job has in fact become a permanent one." *Labor Certification Process for the Temporary Employment of Aliens in Agriculture and Logging in the United States*, 52 FR 20496, 20498 (June 1, 1987). The Department's current regulations, which adopted DHS's definition of "temporary or seasonal nature," specify that employment is of a temporary nature "where the employer's need to fill the position with a temporary worker will, except in extraordinary circumstances, last no longer than 1 year," and "of a seasonal nature where it is tied to a certain time of year by an event or pattern, such as a short annual growing cycle or a specific aspect of a longer cycle, and requires labor levels far above those necessary for ongoing operations." 20 CFR 655.103(d); 8 CFR 214.2(h)(5)(iv)(A); 75 FR 6884, 6890 (adopting DHS's definition "was not intended to create any substantive change in how the Department administers the program"). DHS regulations further provide that the Department's finding that employment is of a temporary or seasonal nature is "normally sufficient" for the purpose of an H–2A petition, but state that notwithstanding this finding, DHS adjudicators will not find employment to be temporary or seasonal in certain situations, such as when "substantial evidence" exists that the employment is not temporary or seasonal. 8 CFR 214.2(h)(5)(iv)(B).

Notwithstanding the regulatory definition found in 20 CFR 655.103(d) and 8 CFR 214.2(h)(5)(iv)(A), a rancher seeking to employ a sheep or goat herder under the 2015 Rule

could continue to seek a temporary agricultural labor certification for up to a 364-day period, as it could under the special procedures that preceded the rule. 80 FR 62958, 62999-63000; *see* 20 CFR 655.215(b)(2) ("The period of need identified on the *H–2A Application for Temporary Employment Certification* and job order for range sheep or goat herding or production occupations must be no more than 364 calendar days."). The 2015 Rule also restricted range livestock occupations to periods of need lasting not more than 10 months. 80 FR 62958, 63000; *see* 20 CFR 655.215(b)(2) ("The period of need identified on the *H–2A Application for Temporary Employment Certification* and job order for range herding or production of cattle, horses, or other domestic hooved livestock, except sheep and goats, must be for no more than 10 months."). For the reasons discussed below, including a recent court decision and related settlement agreement, the Department is now proposing to rescind § 655.215(b)(2) in its entirety.

C. The Hispanic Affairs Project Litigation and Need for Rulemaking

On September 22, 2015, four sheepherders and a nonprofit member organization for Hispanic immigrant workers filed a lawsuit in the U.S. District Court for the District of Columbia challenging aspects of the 2015 Rule. *Hispanic Affairs Project v. Perez*, 206 F. Supp. 3d 348 (D.D.C. 2016).[8] As relevant to this rulemaking, the plaintiffs challenged the Department's decision to allow employers seeking temporary agricultural labor certifications for sheep or goat herder positions to apply for periods of need that last up to 364 days at a time. *See Hispanic Affairs Project v. Acosta*, 263 F. Supp. 3d 160, 182 (D.D.C. 2017) (citing 20 CFR 655.215(b)(2)). The plaintiffs also challenged DHS's alleged practice of automatically approving sheep and goat herder petitions for recurring periods up to 364 days, asserting that the Department's regulation at § 655.215(b)(2) and DHS's alleged practice did not conform with the INA or the Departments' regulations, in violation of the APA. *See id.* Specifically, the plaintiffs argued § 655.215(b)(2) and DHS's alleged practice are inconsistent with 8 U.S.C.

[8] On April 3, 2017, the district court granted two employer associations' motion to intervene as defendants in the litigation. Minute Order Granting Mountain Plains Agricultural Service and Western Range Association's Joint Motion to Intervene, *Hispanic Affairs Project, et al. v. Perez et al.*, No. 15-cv-1562 (D.D.C. Apr. 3, 2017).

1101(a)(15)(H)(ii)(a), which provides that H–2A visas be only for "temporary" work, and conflicts with the Departments' regulations defining when employment is of a "temporary or seasonal nature." *See id.*; *compare* 20 CFR 655.103(d) *and* 8 CFR 214.2(h)(5)(iv)(A) (employer's "need to fill the position with a temporary worker will . . . last no longer than one year") *with* 20 CFR 655.215(b)(2) ("The period of need identified on the [application and job order] . . . must be no more than 364 calendar days."). The district court dismissed the challenge on procedural grounds, concluding the plaintiffs waived their claim against the Department and did not properly or timely raise their claim against DHS. *Id.* at 185-86, 190.[9]

On appeal, the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit) reversed and remanded the district court's decision on these claims for a resolution on the merits. *Hispanic Affairs Project v. Acosta*, 901 F.3d 378, 396-97 (D.C. Cir. 2018). The court held the plaintiffs preserved their challenge to the Department's decision in the 2015 Rule to classify sheep and goat herding as "temporary" employment. *Id.* at 385. In dicta, the court noted the "agency has no power under the statute—it is actually forbidden—to include non-temporary or non-seasonal workers in the H-2A program." *Id.* at 389. The court also held the complaint adequately raised a challenge to DHS's alleged practice of extending "temporary" H–2A petitions beyond the regulatory definition of temporary employment. *Id.* at 385, 388. Taking the evidence submitted by the plaintiffs as true, the court concluded the plaintiffs had "plausibly shown that [DHS]'s *de facto* policy of authorizing long-term visas is arbitrary, capricious, and contrary to law, in violation of the APA and [INA] because it 'authorizes the creation of permanent herder jobs that are not temporary or seasonal.'" *Id.* at 386 (original alterations omitted).

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[9] Plaintiffs also challenged two other aspects of the 2015 Rule: (1) certain definitions and requirements that limit the scope and location of work that H–2A workers in sheep and goat herding positions may perform, 80 FR 62958, 62963-73; and (2) the methodology by which the Department calculates the minimum required wage that such workers (and any non-H–2A workers in corresponding employment) must be offered and paid, *id.* at 62986-96. The Department and DHS prevailed on these issues. *See Hispanic Affairs Project v. Acosta*, 901 F.3d 378, 391-96 (D.C. Cir. 2018), *aff'g in part* 263 F. Supp. 3d 160, 190-207 (D.D.C. 2017).

Following the D.C. Circuit's decision, the parties reached a settlement agreement that was approved by the district court on November 12, 2019. Order Approving the Parties' Settlement Agreement, ECF No. 136, *Hispanic Affairs Project, et al. v. Perez et al.*, No. 15-cv-1562 (D.D.C. Nov. 12, 2019). As part of the settlement, the Department agreed to engage in rulemaking to propose to rescind § 655.215(b)(2) and DHS, through U.S. Citizenship and Immigration Services (USCIS), agreed to publish a policy memorandum that provided guidance on the determination of temporary or seasonal need for H–2A sheep and goat herder petitions. Joint Status Report at 1, ECF No. 135, *Hispanic Affairs Project, et al. v. Perez et al.*, No. 15-cv-1562 (D.D.C. Nov. 8, 2019) (noting "Intervenor Defendants do not object to the Settlement Agreement"). On November 14, 2019, USCIS issued a draft of the memorandum for public comment. After a 30-day public comment period, USCIS published a final memorandum on February 28, 2020, which became effective on June 1, 2020. *See* USCIS, *Policy Memorandum: Updated Guidance on Temporary or Seasonal Need for H-2A Petitions Seeking Workers for Range Sheep and/or Goat Herding or Production* (Feb. 28, 2020) (USCIS Policy Memorandum).[10]

The Department's proposed rescission of § 655.215(b)(2) would eliminate that provision's presumptive period of need for employment involving range sheep or goat herding and absolute restriction on the period of need for employment involving other range livestock activities. The 2015 Rule suggested that the unique nature and history of herding work permitted a variance, on an occupational basis, from the standard H–2A requirements governing the adjudication of an employer's temporary need. As such, § 655.215(b)(2) permits certification of a specific period of time without requiring the Department to assess the true nature of the labor or services to be provided by the H–2A nonimmigrant. The Department, however, is now proposing to rescind § 655.215(b)(2) so that all employers applying for temporary agricultural

[10] *See* https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2020/2-PMH2A-SeasonalSheepGoatHerder_PolicyMemo.pdf.

labor certifications must individually demonstrate their need for the agricultural labor or services to be performed is temporary or seasonal in nature, regardless of occupation. The Department believes this proposed rescission of § 655.215(b)(2) is not only consistent with the D.C. Circuit's decision in *Hispanic Affairs Project* and the guidance issued by USCIS but also better complies with the requirements of the INA implemented in the Departments' regulations that define when employment is of a "temporary or seasonal nature." 8 U.S.C. 1101(a)(15)(H)(ii)(A) (defining an H–2A nonimmigrant as an alien coming to perform services of a temporary or seasonal nature); 20 CFR 655.103(d); 75 FR 6884, 6890 (adopting DHS's definition of "temporary or seasonal nature" set forth in 8 CFR 214.2(h)(5)(iv)(A)).

II. Discussion of Proposed Revision to 20 CFR Part 655, Subpart B

The Department proposes to rescind § 655.215(b)(2) so that the temporary or seasonal need of an employer seeking to fill a herding or production of livestock on the range position would be adjudicated according to the requirement in § 655.103(d) that governs the adjudication of employment of a temporary or seasonal nature for all other H–2A applications. *See* 20 CFR 655.200(a) (noting that employers whose job opportunities meet the qualifying criteria under §§ 655.200-655.235 must fully comply with all the requirements of §§ 655.100-655.185 unless otherwise specified in §§ 655.200-655.235).

In particular, the Department would examine—on a case-by-case basis and taking into consideration the totality of the facts presented—whether an employer's need to fill a herding or production of livestock on the range position is of a temporary or seasonal nature, as those terms are defined in the Department's and DHS's regulations. *See* 20 CFR 655.103(d); 8 CFR 214.2(h)(5)(iv)(A). Section 655.103(d) states that employment "is of a temporary nature where the employer's need to fill the position with a temporary worker will, except in extraordinary circumstances, last no longer than 1 year." The same section states "employment is of a seasonal nature where it is tied to a certain time of year by an event or pattern, such as a short annual growing cycle or a specific aspect of a longer cycle, and requires labor levels far above those

necessary for ongoing operations." This proposal does not alter the regulatory definition and standards under which the Department adjudicates temporary or seasonal need for all other H–2A job opportunities under § 655.103(d).

Although recurring year-round activities cannot be classified as temporary, *see* 75 FR 6884, 6891, the Department recognizes that some herder employers may be able to establish a need to fill positions on a recurring annual basis consistent with the definition of employment of a seasonal nature in § 655.103(d). *See* 80 FR 62958, 62999-63000 (2015 Rule describing comments that delineated seasonal aspects of herder work); 52 FR 20496, 20498 (acknowledging it is appropriate to apply annually for truly "seasonal" employment); *see also* USCIS Policy Memorandum at 3 n.3 (explaining that an employer's need for workers that recurs annually at a given time of year does not mean its need is permanent in nature as employment of a seasonal nature is defined as being tied to a certain time of year). The Department also acknowledges that some employers may have a "temporary" need to fill herding and range livestock job opportunities, which is permissible provided they can show the nature of their need is temporary under § 655.103(d). *See Temporary Workers Under § 301 of the Immigration Reform and Control Act*, 11 Op. O.L.C. 39, 40 & n.4 (1987) (noting "'temporary' means something other than seasonal" and explaining employers may fill "permanent jobs that an employer needs to fill on a temporary basis — for example, because the regular American employee has fallen ill or extra hands are needed during a busy period"); 11 Op. O.L.C. at 42 ("The nature of the job itself is irrelevant. What is relevant is whether the employer's need is truly temporary.").

The proposed rule aligns the Department's adjudication of the temporary or seasonal need of herder applications with corresponding changes DHS has implemented in the USCIS Policy Memorandum. The memorandum explains, for example, that USCIS will adjudicate H–2A sheep and goat herder petitions filed on or after June 1, 2020, on a case-by-case basis, taking into consideration the totality of the facts presented, and in the same manner as all other H–2A petitions. USCIS Policy Memorandum at 1, 9. Under this memorandum, past periods of need

approved by USCIS prior to June 1, 2020, will be one element considered when determining whether an H–2A petition demonstrates a true temporary or seasonal need. *Id.* at 9.

The Department requests comments on all issues related to this proposed rule, including economic or other regulatory impacts of this rule on the public. As noted above, on July 26, 2019, the Department issued a separate notice of proposed rulemaking that proposed to amend the regulations regarding the certification of temporary employment for nonimmigrant workers employed in temporary or seasonal agricultural employment and the enforcement of the contractual obligations applicable to employers of such nonimmigrant workers. 84 FR 36168. In the 2019 NPRM, the Department sought public comment on the possibility of moving the adjudication of an employer's temporary or seasonal need exclusively to DHS or exclusively to DOL. *Id.* at 36178. The 2019 NPRM also proposed other amendments to the Department's regulations governing the H–2A program at 20 CFR part 655, subpart B. Because the comment period for that rulemaking closed on September 24, 2019, the change proposed here—rescission of § 655.215(b)(2)—does not affect the request for comments in that NPRM. The Department expects to publish a separate final rule for the 2019 NPRM, responding to public comment on the proposals contained therein. The Department does not anticipate the rulemaking associated with the 2019 NPRM will affect the change proposed here and comments on the proposals contained in that NPRM are outside the scope of this limited rulemaking. To the extent a final rule associated with the 2019 NPRM substantively affects this rulemaking, the Department will consider, as appropriate, extending or reopening the public comment period for this proposal.

III. Administrative Information

A. Executive Order 12866, Regulatory Planning and Review; and Executive Order 13563, Improved Regulation and Regulatory Review

Under E.O. 12866, the Office of Management and Budget (OMB)'s Office of Information and Regulatory Affairs determines whether a regulatory action is significant and therefore, subject to the requirements of the E.O. and OMB review. Section 3(f) of E.O. 12866

defines a "significant regulatory action" as an action that is likely to result in a rule that (1) has an annual effect on the economy of $100 million or more, or adversely affects in a material way a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities (also referred to as economically significant); (2) creates serious inconsistency or otherwise interferes with an action taken or planned by another agency; (3) materially alters the budgetary impacts of entitlement grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the E.O. This proposed rule is a significant, but not economically significant, regulatory action under Section 3(f) of E.O. 12866. The Department has prepared a Regulatory Impact Analysis (RIA) in connection with this proposed rule, as required under section 6(a)(3) of E.O. 12866.

E.O. 13563 directs agencies to propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs; the regulation is tailored to impose the least burden on society, consistent with achieving the regulatory objectives; and in choosing among alternative regulatory approaches, the agency has selected those approaches that maximize net benefits. E.O. 13563 recognizes that some benefits are difficult to quantify and provides that, where appropriate and permitted by law, agencies may consider and discuss qualitatively values that are difficult or impossible to quantify, including equity, human dignity, fairness, and distributive impacts.

Overview of this Rule

The Department has determined that this proposed rule is necessary as it would clarify the Department's adjudication of temporary or seasonal need for herding and range livestock applications for temporary agricultural labor certification under the H–2A program, and would align that adjudication with the requirements of the INA. The proposed rule would also standardize the Department's adjudication of temporary need under the H–2A program. The Department's definition of "temporary or seasonal nature" for the H–2A program, with the

exception of its current definition of "temporary" for herding and range livestock occupations, is consistent with the Department of Homeland Security's definition specifying that employment is of a temporary nature "where the employer's need to fill the position with a temporary worker will, except in extraordinary circumstances, last no longer than 1 year," and "of a seasonal nature where it is tied to a certain time of year by an event or pattern, such as a short annual growing cycle or a specific aspect of a longer cycle, and requires labor levels far above those necessary for ongoing operations." 20 CFR 655.103(d); 8 CFR 214.2(h)(5)(iv)(A).

Notwithstanding the regulatory definition found in 20 CFR 655.103(d) and 8 CFR 214.2(h)(5)(iv)(A), the 2015 Rule allowed employers of sheep and goat herders to apply for a temporary agricultural labor certification for a period of up to 364 days. Conversely, the same rule limited employers of range livestock occupations to a temporary agricultural labor certification with a period of need not to exceed 10 months. As discussed above, an appellate court held that plaintiffs preserved their challenge to the Department's decision in the 2015 Rule to classify sheep and goat herding as "temporary" employment. The court additionally held the complaint adequately raised a challenge to DHS's alleged practice of extending "temporary" H–2A petitions beyond the regulatory definition of temporary employment. Taking the evidence submitted by the plaintiffs as true, the court concluded the plaintiffs had plausibly shown DHS's alleged practice of automatically extending H–2A petitions would convert job opportunities that should be temporary or seasonal in nature into permanent positions, which is inconsistent with Section 101(a)(15)(H)(ii)(a) of the INA. The parties subsequently reached a settlement agreement in which the Department agreed to engage in rulemaking to propose to rescind § 655.215(b)(2) and DHS, through USCIS, agreed to publish a policy memorandum that provided guidance on the determination of temporary or seasonal need for H–2A sheep and goat herder petitions.

In this proposed rule, the Department proposes to rescind § 655.215(b)(2), which would eliminate that provision's presumptive period of need for employment involving range herding

and absolute restriction on the period of need for employment involving range livestock activities. Instead, all employers applying for H–2A temporary agricultural labor certifications under the proposed rule must individually demonstrate that their need for workers is temporary or seasonal, regardless of occupation.

Economic Impact

The Department estimates that the proposed rule, if finalized, would result in costs to employers associated with their familiarization with the rule. The cost of the proposed rule is associated with rule familiarization requirements for all herding and range livestock employers utilizing the H–2A program.

In addition to the rule familiarization cost, the Department believes that employers may incur other costs from the implementation of the proposed rule attributed to changes in business operations, transportation, staffing turnover, and training requirements. As explained above, although recurring year-round activities cannot be classified as temporary, the Department recognizes that there may be seasonal aspects of herder work for which employers may still establish a need to fill positions on a recurring annual basis consistent with the definition of employment of a "seasonal" nature in § 655.103(d) and that some herder employers may also still present a need that is truly "temporary" under § 655.103(d) in certain circumstances. The Department qualitatively discusses the potential costs to employers incurred by the implementation of this rule but does not quantify them due to a lack of available data and the wide spectrum of possible responses by employers that cannot be predicted with specificity. The Department seeks public comment on how these employers may be impacted by the proposed change in regulation. Transfer payments under the proposed rule, if finalized, would result from eliminating the absolute restriction on the period of need for employment involving other range livestock activities and the presumptive period of need for employment involving range sheep or goat herding. In particular, some employers engaged in non-sheep and/or goat herding

activities[11] could potentially extend their period of need beyond 10 months, provided they can show the nature of their need is temporary.[12] In addition, sheep and/or goat herding employers whose need is temporary or seasonal in nature and whose period of need currently exceeds 10 months would be expected to reduce their period of need to 10 months or less.[13] See the costs and transfer payments subsections below for a detailed explanation.

As shown in Exhibit 1, the Department estimates the changes proposed in this rule would result in a quantified annualized cost of $3,144 at a discount rate of 7 percent and $2,588 at a discount rate of 3 percent, as well as unquantified costs associated with changes in business operations, transportation, staffing turnover, and training requirements. Additionally, the proposed rule, if finalized, is expected to result in transfers for all herding and range livestock employers. Some employers engaged in non-sheep and/or goat herding activities would incur a transfer from employers to employees due to rescinding the restriction on the period of need for employment involving range livestock activities. The Department estimates that the proposed rule would result in annualized transfers of $95,556 at a discount rate of 7 percent and $91,983 at a discount rate of 3 percent for these employers. Furthermore, employers engaged in sheep and/or goat herding activities would experience a transfer from employees to employers due to a reduction in the allowed period of need for the majority of the aforementioned employers. The Department estimates that the proposed rule would result in annualized transfers of $8.42 million at a discount rate of 7 percent and $8.11 million at a discount rate of 3 percent for these employers.

Exhibit 1: Estimated Costs and Transfer Payments of the Proposed Rule			
	Costs	**Transfer Payments from Employers of**	**Transfer Payments**

[11] This includes range herding or production of cattle, horses, or other domestic hooved livestock except sheep and goats.

[12] For the purpose of this analysis, employers engaged in non-sheep and/or goat herding activities with a minimum period of need of 300 days and a maximum period of need of 308 days were used to make the Department's transfer estimates.

[13] The Department's records indicate that the majority of employers engaged in sheep and/or goat herding occupations would likely reduce their requested period of need to 10 months or less. The Department used 300 days to represent a period of 10 months.

		Non-Sheep and/or Goat Herding	to Employers of Sheep and/or Goat Herding
Undiscounted 10-Year Total	$22,079	$893,043	$78,731,848
10-Year Total with a Discount Rate of 3%	$22,079	$784,637	$69,174,659
10-Year Total with a Discount Rate of 7%	$22,079	$671,143	$59,168,812
Annualized at a Discount Rate of 3%	$2,588	$91,983	$8,109,380
Annualized at a Discount Rate of 7%	$3,144	$95,556	$8,424,308

The Department was unable to quantify some costs, cost savings, and benefits of the proposed rule. The Department, however, invites comments regarding the assumptions, data sources, and methodologies used to estimate the costs and transfer payments from this proposed rule.

i. Costs

a. Rule Familiarization Costs

Should the proposed rule take effect, herding and range livestock employers would need to familiarize themselves with the new regulations; consequently, this will impose a one-time cost in the first year. The Department's analysis assumes that the changes introduced by the rule would be reviewed by Human Resources Specialists (SOC 13-1071). The median hourly wage for these workers is $29.77 per hour.[14] In addition, the Department assumes that benefits are paid at a rate of 46 percent[15] and overhead costs are paid at a rate of 17 percent of the base wage, resulting in a fully-loaded hourly wage of $48.53.[16] This hourly wage was multiplied by the

[14] Median hourly wage for Human Resources Specialists were obtained from the Bureau of Labor Statistics Occupational Employment Statistics Survey, May 2019, https://www.bls.gov/oes/current/oes131071.htm.
[15] The benefits-earnings ratio is derived from the Bureau of Labor Statistics' Employer Costs for Employee Compensation data using variables CMU1020000000000D and CMU1030000000000D.
[16] $29.77 + $29.77(0.46) + $29.77(0.17) = $48.53.

estimated number of herding and range livestock employers (910)[17] and by the estimated amount of time required to review the rule (.5 hours). This calculation results in a one-time cost of $22,079 in the first year after the proposed rule takes effect. The annualized cost over the 10-year period is $2,588 and $3,144 at discount rates of 3 and 7 percent, respectively.

b. Other Costs

The Department assumes some employers will experience increased costs associated with changes in business operations, transportation, staffing turnover, and training requirements under this proposed rule. In accordance with the Department's current regulation, employers of sheep and goat herders are permitted to apply for a temporary agricultural labor certification for a period of up to 364 days. Under the proposed rule if finalized, sheep and goat herding employers whose need is temporary or seasonal in nature and whose period of need currently exceeds 10 months would be expected to reduce their period of need to 10 months or less. The Department notes that, in instances where employers have recurring year-round labor needs that are actually permanent, rather than temporary or seasonal in nature, the Department expects some employers might utilize the employment-based immigrant petition process to hire foreign workers, which includes options for skilled workers, professionals, and other workers under 8 U.S.C 1153(b)(3). The Department seeks comment on how employers might adjust their business models to accommodate the reduction in the permitted length of employment, and what effect this might have on costs of operations. Although the Department does not anticipate the proposed rule will have a significant adverse effect as employers must already adjust to DHS's guidelines, the Department acknowledges that some employers of sheep and goat herders will need to replenish their labor supply by hiring additional U.S. workers to account for the reduced period of need, or extending the work schedule for U.S. workers that they employ if they are available. This may

[17] The Department's estimate of 910 unique employers is based on H–2A certification data from Fiscal Years (FYs) 2017, 2018, and 2019. The Department identified the average number of unique applicants engaged in sheep and/or goat herding activities across FYs 2017, 2018, and 2019 (744). This was then added to the average number of unique applicants engaged in non-goat/sheep and/or goat herding activities across the same time period (166). 744 + 166 = 910.

lead to increased costs due to staffing turnovers, the need to train new employees, overtime incurred due to increased work hours, as well as potential changes to their business practices. The Department does not have data available to assess how the universe of sheep and goat herding employers may be impacted by this change and seeks public comment on how these employers may be impacted by the proposed rule.

Transfers

The first category of transfers associated with this proposed rule would be an employer to employee transfer incurred due to a potential increase in the maximum period of need from 10 months up to 1 year, or longer in extraordinary circumstances, for a small number of employers engaged in non-sheep and/or goat herding who can demonstrate their need is temporary.

Exhibit 2 presents the distribution of the period of need on approved applications filed by unique employers of non-sheep and/or goat herders during FYs 2017, 2018, and 2019.

Exhibit 2: Distribution of Period of Need for Unique Certified Employers of Non-Sheep/Goat Herding by Year (FY 17 – 19)			
Period of Need (Days)	**Year**		
	2017	**2018**	**2019**
0 – 70	5	5	10
71 – 140	15	16	17
141 – 210	10	10	7
210 – 299	27	47	48
300 – 308	72	103	107
> 308	0	0	0
Number of Unique Employers	129	181	189
Average Period of Need	254	260	257

Transfer payments were calculated by identifying unique employers engaged in non-sheep and/or goat herding from FYs 2017, 2018, and 2019.[18] The Department then identified employers within this group of unique employers whose applications contained periods of need between 300 and 308 days. The Department identified this subset because some employers whose applications contained periods of need that fall within this range are likely to extend their

[18] Based on FYs 2017, 2018, and 2019 performance data obtained from OFLC, the Department estimates that the number of non-sheep and/or goat herding employers is unlikely to increase over the rule's 10-year time forecast.

period of need up to a year, or longer in extraordinary circumstances, if they can demonstrate their need is temporary in nature (*i.e.*, their need is not for recurring year-round activities). The Department expects that an infrequent number of employers of non-sheep and/or goat herders would extend their period of need beyond 10 months. For this analysis, the Department conservatively assumes that no more than 10 percent of the unique employers who were identified to have a period of need between 300 and 308 days would apply, and be approved by OFLC, to extend their period of temporary need beyond a 10-month period.[19] The Department invites comments regarding the assumptions on the percentage of unique employers affected. Based on OFLC's performance data, the Department estimated the impact of extending the period of need by multiplying the number of workers certified for each of the unique non-sheep and/or goat herding employers by the basic rate of pay offered to these workers each year. The figures for each year were then multiplied by 2 in order to estimate the impact from an additional two months of need, which yields an annualized transfer of $95,556 at a discount rate of 7 percent and $91,983 at a discount rate of 3 percent.

The second category of transfers associated with this proposed rule would be an employee to employer transfer incurred due to potential reductions in sheep and/or goat herding employers' period of need from a maximum of 364 days to 10 months or less for annually recurring applications.[20]

Exhibit 3 presents the distribution of the period of need on approved applications filed by unique employers of sheep and/or goat herders during FYs 2017, 2018, and 2019.

Exhibit 3: Distribution of Period of Need for Unique Certified Employers of Sheep/Goat Herding by Year (FY 17 – 19)	
Period of Need (Days)	**Year**

[19] The Department assumes a small percentage of the unique employers who were identified to have a period of need between 300 and 308 days will apply to extend their period of temporary need beyond a 10-month period up to 1 year, or longer in extraordinary circumstances.

[20] The Department's analysis of employers of sheep and goat herders represents the transfer from employer to employee. The Department assumes that in some instances that employers will seek to replace H-2A employees who have met the period of need threshold with U.S. employees, which would constitute a transfer between H-2A employees and U.S. employees. This potential transfer could not be evaluated due to data limitations.

	2017	2018	2019
0 – 70	0	2	3
71 – 140	1	4	9
141 – 210	6	5	3
210 – 299	4	7	7
> 299	743	673	761
Number of Unique Employers	754	691	783
Average Period of Need	360	357	356

Transfer payments were calculated by identifying unique employers engaged in sheep and/or goat herding from FYs 2017, 2018, and 2019.[21] The Department identified employers within this group of unique employers whose applications contained a period of need of 300 days or more. Based on OFLC's performance data, the Department estimated the impact of reducing the period of eligibility by multiplying the number of workers certified for each of the unique sheep and/or goat herding employers by the basic rate of pay offered to these workers each year. The figures for each year were then multiplied by the number of days requested for the period of need of 300 days or more in order to estimate the impact from reducing the period of need to 10 months or less, which yields an annualized transfer of $8,424,308 at a discount rate of 7 percent and $8,109,380 at a discount rate of 3 percent.

ii. Benefits

By rescinding 20 CFR 655.215(b)(2), the Department standardizes the adjudication of temporary need under the H–2A program and aligns the Department's adjudication of the temporary or seasonal need of herder applications with corresponding changes DHS has implemented in the USCIS Policy Memorandum. Furthermore, the proposed rescission of § 655.215(b)(2) better complies with pertinent provisions of the INA and the Departments' applicable implementing regulations that define when employment is of a "temporary or seasonal nature." Therefore, this proposed rule aims to help ensure the employment of H–2A workers in

[21] Based on FYs 2017, 2018, and 2019 performance data obtained from OFLC.

herding and range livestock operations does not adversely affect the wages and working conditions of workers in the United States similarly employed.

B. Regulatory Flexibility Analysis *and Small Business Regulatory Enforcement Fairness Act and Executive Order 13272: Proper Consideration of Small Entities in Agency Rulemaking*

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601 et seq., as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. 104–121 (March 29, 1996), requires Federal agencies engaged in rulemaking to consider the impact of their proposals on small entities, consider alternatives to minimize that impact, and solicit public comment on their analyses. The RFA requires the assessment of the impact of a regulation on a wide range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions. Agencies must perform a review to determine whether a proposed or final rule would have a significant economic impact on a substantial number of small entities. 5 U.S.C. 603, 604. If the determination is that it would, the agency must prepare a regulatory flexibility analysis as described in the RFA. *Id*.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. *See* 5 U.S.C. 605. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The Department does not expect that this NPRM will have a significant economic impact on a substantial number of small entities. However, the Department is publishing this Initial Regulatory Flexibility Analysis (IRFA) to invite public comment on all aspects of this IRFA, including the estimates related to the number of small entities affected by the NPRM and expected costs. The Department also invites public comment on whether viable alternatives exist that would reduce the burden on small entities while remaining consistent with statutory requirements and the objectives of the NPRM.

1. Why the Department is Considering Action

The Department has determined that this proposed rule is necessary as it would clarify the Department's adjudication of temporary or seasonal need for herding and range livestock applications for temporary agricultural labor certification under the H–2A program, and would align that adjudication with the requirements of the INA. The proposed rule would also standardize the Department's adjudication of temporary need under the H–2A program. The Department's definition of "temporary or seasonal nature" for the H–2A program, with the exception of its current definition of "temporary" for herding and range livestock occupations, is consistent with the Department of Homeland Security's definition specifying that employment is of a temporary nature "where the employer's need to fill the position with a temporary worker will, except in extraordinary circumstances, last no longer than 1 year," and "of a seasonal nature where it is tied to a certain time of year by an event or pattern, such as a short annual growing cycle or a specific aspect of a longer cycle, and requires labor levels far above those necessary for ongoing operations." 20 CFR 655.103(d); 8 CFR 214.2(h)(5)(iv)(A).

2. Objectives of and Legal Basis for the NPRM

The Department's proposed rescission of § 655.215(b)(2) would eliminate that provision's presumptive period of need for employment involving range sheep or goat herding and absolute restriction on the period of need for employment involving other range livestock activities. The 2015 Rule suggested that the unique nature and history of herding work permitted a variance, on an occupational basis, from the standard H–2A requirements governing the adjudication of an employer's temporary need. As such, § 655.215(b)(2) permits certification of a specific period of time without requiring the Department to assess the true nature of the labor or services to be provided by the H–2A nonimmigrant. The Department, however, is now proposing to rescind § 655.215(b)(2) so that all employers applying for temporary agricultural labor certifications must individually demonstrate their need for the agricultural labor or services to be performed is

temporary or seasonal in nature, regardless of occupation. The Department believes this proposed rescission of § 655.215(b)(2) is not only consistent with the D.C. Circuit's decision in *Hispanic Affairs Project* and the guidance issued by USCIS but also better complies with the requirements of the INA implemented in the Departments' regulations that define when employment is of a "temporary or seasonal nature." 8 U.S.C. 1101(a)(15)(H)(ii)(A) (defining an H–2A nonimmigrant as an alien coming to perform services of a temporary or seasonal nature); 20 CFR 655.103(d); 75 FR 6884, 6890 (adopting DHS's definition of "temporary or seasonal nature" set forth in 8 CFR 214.2(h)(5)(iv)(A)).

3. Estimating the Number of Small Entities Affected by the Rulemaking

The Department collected industry data from the Bureau of Labor Statistics' (BLS) Quarterly Census for Employment and Wage (QCEW) for FY 2020. This process allowed the Department to identify the number of entities impacted by this proposed rule for two North American Industry Classification System (NAICS) Codes that frequently request H–2A certification for herding and livestock production job opportunities: NAICS 112410: Sheep Farming, and NAICS 112111: Beef Cattle Ranching, and Farming. The Department was able to identify 9,329 establishments that are classified as part of the beef cattle ranching, and farming industry, and 233 Establishments that are classified as part of the sheep farming industry. Next, the Department used the SBA size standards to classify the vast majority of these employers (approximately 99 percent) as small.

4. Compliance Requirements of the NPRM, Including Reporting and Recordkeeping

The Department has estimated the cost of the time to read and review the proposed rule. In addition, the Department assumes some employers will experience increased costs associated with changes in business operations, transportation, staffing turnover, and training requirements under this proposed rule. The Department seeks comment on how employers might adjust their business models to accommodate the reduction in the permitted length of employment, and what effect this might have on costs of operations.

5. Calculating the Impact of the NPRM on Small Entities

The Department estimates that small businesses engaged in herding and livestock production would incur a one-time cost of $24.27 to familiarize themselves with the changes proposed by this rule. Other costs that employers could incur are attributed to the potential need to adjust their staffing and business operations as well as employing more U.S. workers to offset the loss of H-2A workers. However, we do not expect that these costs will be significant, and we seek public comments on this matter. The Department reviewed the impacts of this proposed rule for two North American Industry Classification System (NAICS) Codes that frequently request H–2A certification for herding and livestock production job opportunities: NAICS 112410: Sheep Farming, and NAICS 112111: Beef Cattle Ranching, and Farming.

The Small Business Administration estimates that revenue for a small business with NAICS Code 112410 is $1.0 million and for NAICS Code 112111 is $1.0 million. Although the Department does not anticipate the proposed rule will have a significant adverse effect as employers must already adjust to DHS's guidelines, the Department acknowledges that some employers of sheep and goat herders will need to replenish their labor supply by hiring additional U.S. workers to account for the reduced period of need, or extending the work schedule for U.S. workers that they employ.

6. Relevant Federal Rules Duplicating, Overlapping, or Conflicting with the NPRM

The Department is not aware of any relevant Federal rules that conflict with this NPRM.

7. Alternative to the NPRM

The RFA directs agencies to assess the impacts that various regulatory alternatives would have on small entities and to consider ways to minimize those impacts. As part of the settlement agreement, ECF No. 136, *Hispanic Affairs Project, et al. v. Perez et al.,* the Department agreed to engage in rulemaking to propose to rescind § 655.215(b)(2). The Department invites public

comment on whether viable alternatives exist that would reduce the burden on small entities while remaining consistent with statutory requirements and the objectives of the NPRM.

C. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.*, and its attendant regulations, 5 CFR part 1320, require the Department to consider the agency's need for its information collections and their practical utility, the impact of paperwork and other information collection burdens imposed on the public, and how to minimize those burdens. This NPRM does not require a collection of information subject to approval by OMB under the PRA, or affect any existing collections of information.

D. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (UMRA) is intended, among other things, to curb the practice of imposing unfunded Federal mandates on state, local, and tribal governments. Title II of the UMRA requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in $100 million or more in expenditures (adjusted annually for inflation) in any 1 year by state, local, and tribal governments, in the aggregate, or by the private sector. A Federal mandate is defined in 2 U.S.C. 658, in part, as any provision in a regulation that imposes an enforceable duty upon state, local, or tribal governments, or the private sector. Following consideration of these factors, the Department has concluded that, if finalized as proposed, this proposed rule would contain no unfunded Federal mandates, including no "Federal intergovernmental mandate" or "Federal private sector mandate."

This NPRM, if finalized as proposed, would not exceed the $100 million in expenditures in any 1 year when adjusted for inflation, and this rulemaking does not contain such a mandate. The requirements of Title II of the UMRA, therefore, do not apply, and the Department is not required to prepare a statement under the UMRA.

E. Executive Order 13132, Federalism

The Department has concluded that this NPRM, if finalized as proposed, does not have federalism implications, because it would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Accordingly, E.O. 13132 requires no further agency action or analysis.

F. Executive Order 13175, Consultation and Coordination with Indian Tribal Governments

After consideration, the Department has determined that this NPRM, if finalized as proposed, would not result in "tribal implications," because it would not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and tribal governments. Accordingly, E.O. 13175 would require no further agency action or analysis.

List of Subjects in 20 CFR Part 655

Administrative practice and procedure, Employment, Employment and training, Enforcement, Foreign workers, Forest and forest products, Fraud, Health professions, Immigration, Labor, Longshore and harbor work, Migrant workers, Nonimmigrant workers, Passports and visas, Penalties, Reporting and recordkeeping requirements, Unemployment, Wages, Working conditions.

For the reasons set forth above, the Department proposes to amend part 655 of title 20 of the Code of Federal Regulations as follows:

PART 655—TEMPORARY EMPLOYMENT OF FOREIGN WORKERS IN THE UNITED STATES

1. The authority citation for part 655 continues to read as follows:

Authority: Section 655.0 issued under 8 U.S.C. 1101(a)(15)(E)(iii), 1101(a)(15)(H)(i) and (ii), 8 U.S.C. 1103(a)(6), 1182(m), (n), and (t), 1184(c), (g), and (j), 1188, and 1288(c) and (d); sec. 3(c)(1), Pub. L. 101–238, 103 Stat. 2099, 2102 (8 U.S.C. 1182 note); sec. 221(a), Pub.

L. 101–649, 104 Stat. 4978, 5027 (8 U.S.C. 1184 note); sec. 303(a)(8), Pub. L. 102–232, 105 Stat. 1733, 1748 (8 U.S.C. 1101 note); sec. 323(c), Pub. L. 103–206, 107 Stat. 2428; sec. 412(e), Pub. L. 105–277, 112 Stat. 2681 (8 U.S.C. 1182 note); sec. 2(d), Pub. L. 106–95, 113 Stat. 1312, 1316 (8 U.S.C. 1182 note); 29 U.S.C. 49k; Pub. L. 107–296, 116 Stat. 2135, as amended; Pub. L. 109–423, 120 Stat. 2900; 8 CFR 214.2(h)(4)(i); 8 CFR 214.2(h)(6)(iii); and sec. 6, Pub. L. 115–218, 132 Stat. 1547 (48 U.S.C. 1806).

Subpart A issued under 8 CFR 214.2(h).

Subpart B issued under 8 U.S.C. 1101(a)(15)(H)(ii)(a), 1184(c), and 1188; and 8 CFR 214.2(h).

Subpart E issued under 48 U.S.C. 1806.

Subparts F and G issued under 8 U.S.C. 1288(c) and (d); sec. 323(c), Pub. L. 103–206, 107 Stat. 2428; and 28 U.S.C. 2461 note, Pub. L. 114–74 at section 701.

Subparts H and I issued under 8 U.S.C. 1101(a)(15)(H)(i)(b) and (b)(1), 1182(n) and (t), and 1184(g) and (j); sec. 303(a)(8), Pub. L. 102–232, 105 Stat. 1733, 1748 (8 U.S.C. 1101 note); sec. 412(e), Pub. L. 105–277, 112 Stat. 2681; 8 CFR 214.2(h); and 28 U.S.C. 2461 note, Pub. L. 114–74 at section 701.

Subparts L and M issued under 8 U.S.C. 1101(a)(15)(H)(i)(c) and 1182(m); sec. 2(d), Pub. L. 106–95, 113 Stat. 1312, 1316 (8 U.S.C. 1182 note); Pub. L. 109–423, 120 Stat. 2900; and 8 CFR 214.2(h).

§ 655,215 [Amended]

2. Amend § 655.215 by removing paragraph (b)(2) and redesignating paragraph (b)(3) as paragraph (b)(2).

Suzan G. LeVine,

Principal Deputy Assistant Secretary for Employment and Training, Labor.

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